



Town of Dumfries
Council Meeting

Meeting Date:

December 10, 2013

Agenda Item#

XVII - A

AGENDA ITEM FORM

TYPE OF AGENDA ITEM:

- ☐ CONSENT AGENDA
☐ PRESENTATION
☐ ACTION ITEM
☐ TOWN MANAGER & STAFF COMMENTS
☐ PUBLIC HEARING
☐ Duly Advertised

PURPOSE OF ITEM:

- ☒ INFORMATION ONLY
☐ DISCUSSION ONLY
☐ DISCUSSION AND/OR DECISION
☐ Introduction ☐ Resolution
☐ Ordinance ☐ Grant/MOU
☐ By Motion ☐ Bylaws
☐ Certificate

PRESENTER: Richard West

PRESENTER TITLE: Director of Public Works

AGENDA ITEM:

Draft Memorandum of Understanding (MOU) between Counties and their respective Towns regarding distribution and use of 30 percent funds under Chapter 766 of the 2013 Virginia Acts of Assembly

BACKGROUND / SUMMARY:

The Northern Virginia Transportation Authority (NVTA) has been developing draft MOUs for distribution and use of 30 percent funds under Chapter 766 of the 2013 Virginia Act of Assembly (HB2313). The first 30 percent of funds that NVTA receives will be distributed to the Counties and Cities of NVTA. Counties will then distribute their respective Towns their portions of the 30 percent funds.

NVTA has developed one "standard" MOU for all Counties and Cities to execute with the NVTA, and one "standard" MOU for Counties with Towns that will receive funds.

The draft MOU is attached for information. It is anticipated that the MOU will be brought before Council for discussion/approval in January 2014.

ATTACHMENTS: Draft MOU

REQUESTED ACTION:

☒ NO ACTION REQUESTED

For informational purposes and proposed action in January

FOR MORE INFORMATION, CONTACT:

Phone#: 703 221-3400

Name:

Richard West

E-mail:

rwest@dumfriesva.gov

FOR USE DURING MEETING

Y N

☐ ☐ Brewer
☐ ☐ Reynolds
☐ ☐ Wood

Y N

☐ ☐ Foreman
☐ ☐ Toney

VOTE:

☐ PASSED

☐ NOT PASSED

Y N

☐ ☐ Forrester
☐ ☐ Washington

**MEMORANDUM OF AGREEMENT
BETWEEN (COUNTY"X") AND ("QUALIFYING TOWN X")
REGARDING DISTRIBUTION AND USE OF 30% FUNDS UNDER CHAPTER
766 OF THE 2013 VIRGINIA ACTS OF ASSEMBLY**

THIS MEMORANDUM OF AGREEMENT, effective the ____ day of _____, 2013 (this "Memorandum of Agreement"), by and between the COUNTY OF _____ ("COUNTY NAME "), a member of the NORTHERN VIRGINIA TRANSPORTATION AUTHORITY ("NVTA") and the TOWN of _____, a QUALIFYING TOWN under the NVTA ACT and Chapter 766 of the 2013 Virginia Acts of Assembly ("Chapter 766").

W I T N E S S E T H:

WHEREAS, NVTA was established by the Northern Virginia Transportation District Act, Va. Code Ann. §§ 15.2- 4629 *et seq.*, the local jurisdiction members of which include the counties of Arlington, Fairfax, Loudoun, and Prince William, and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park, (collectively and individually "City/County"); and

WHEREAS, in accordance with Va.. Code Ann. § 15.2-4838.01, a special non-reverting fund for Planning District 8, known as the Northern Virginia Transportation Authority Fund was created in the Virginia state treasury, comprised of taxes and fees levied in accordance with the aforesaid Code section and any other funds that may be received for the credit of the aforesaid fund (the "Fund"), the proceeds of which fund are distributed to NVTA for use in accordance with Va. Code Ann. § 15.2-4838.1; and

WHEREAS, in accordance with, and subject to the requirements of, § 15.2-4838.1, thirty percent (30%) of the revenues received by NVTA shall be distributed on a pro rata basis to each City/County with each City/County's share being the total of the

revenues received by NVTa that are generated by or attributable to the City/County divided by the total of such revenue received by NVTa (the "30% Funds"); and

WHEREAS, among other requirements of Va. Code Ann. § 15.2-4838.1, each City/County shall deposit all Fund revenues received from NVTa in a separate, special fund to be used for additional urban or secondary road construction, for other capital improvements that reduce congestion, for other transportation capital improvements in NVTa's most recent long range transportation plan, or for public transportation purposes; and

WHEREAS, § 15.2-4838.1 further requires each City/County to provide annually to NVTa sufficient documentation as required by NVTa showing that the 30% Funds received by the City/County were used as required by § 15.2-4838.1; and

WHEREAS, § 15.2-4835 provides that the administrative expenses of NVTa, as set forth in NVTa's annual budget, shall be allocated among the component counties and cities based on relative population, and in accordance with §15.2-4838.1, such administrative expenses may be paid from the 30% Funds; and

WHEREAS, pursuant to Chapter 766, the legislation establishing the Fund, imposes, among other requirements, the following requirements on each of the Localities: (1) that each of the Localities deposit into its separate special fund containing NVTa Funds disbursed to it, all revenues from the commercial and industrial tax collected under § 58.1-3221.3 pursuant to the maximum tax rate allowed under that section or, in lieu of that amount, an amount from sources other than moneys received from NVTa equivalent to the amount that would have been received had the maximum tax rate been imposed; and (2) that each of the Localities expend or disburse for transportation purposes each year an amount that is at least equal to the average amount expended or disbursed for

transportation purposes by the county or city between July 1, 2010 and June 30, 2013, excluding bond proceeds or debt service payments and federal or state grants; and

WHEREAS, § 15.2-4838.1B.2 provides that if any City/County fails to deposit into its separate special fund containing NVTAFunds disbursed to it the amount equivalent to the maximum tax rate allowed under § 58.1-3221.3, then NVTAF shall reduce the amount of the 30% Funds disbursed to the City/County by the difference between the amount that was deposited in the City/County's separate special fund and the amount that should have been deposited;

WHEREAS Chapter 766 further provides that in the event any of the Localities or any local government within any of the Localities appropriates or allocates any of the 30% Funds to a non-transportation purpose, that City/County shall not be the direct beneficiary of any of the revenues from the NVTAFund in the year immediately succeeding the year in which the 30% Funds were appropriated or allocated to a non-transportation purpose; and

WHEREAS, NVTAF has a continuing responsibility to ensure that the 30% Funds are properly spent, and that each NVTAF member City/County adheres to the statutory and other legal obligations it has with regard to the Fund;

WHEREAS, Enactment Clause 8 of Chapter 766 provides that NVTAF and the Counties and Cities embraced by the Authority shall work cooperatively with towns with a population greater than 3,500 located within such Counties ("qualifying towns") for purposes of implementing the provisions of Chapter 766 and to ensure that any such qualifying towns receive their respective shares of the revenues pursuant to subdivision B (1) of Section 15.2-4838.1;

WHEREAS, NVTAF and its member Cities/Counties have entered into a separate Memorandum of Agreement in order to implement the provisions of Chapter 766 with

regard to *inter alia* the distribution and use of funds in the manner prescribed by Va. Code Ann. Section 15.2-4838.1;

WHEREAS NVTa and its member Cities/Counties have agreed to be bound by the terms and conditions set forth in that separate Memorandum of Agreement ("NVTa/City-County MOA"), for purposes of ensuring that NVTa, its Cities/Counties, and its qualifying towns are in full compliance with Chapter 766 and all applicable requirements of the NVTa ACT regarding the receipt, maintenance, management, oversight, distribution and use of all funds from the NVTa Fund;

NOW, THEREFORE, in consideration of the foregoing; which is hereby incorporated within this MOA and the mutual undertakings of the parties, the County of _____ and the Qualifying Town of _____ agree as follows:

1. The parties understand and acknowledge that NVTa will manage the NVTa Fund and all funds therein and shall receive from the Commonwealth's Comptroller regular distributions of the sums deposited in the special non-reverting fund created in the state treasury known as the Northern Virginia Transportation Authority Fund. NVTa shall accept each such distribution of funds and deposit them as it deems appropriate, and shall manage such deposits, including investments thereof which shall be made pursuant to NVTa's investment policy and procedures as such may be revised from time to time, all in accordance with generally accepted accounting principles and all applicable legal requirements. NVTa shall provide to its governing board periodic reports of deposits on hand and all disbursements and expenditures thereof, and shall obtain an annual audit of its books. NVTa, its component Cities/Counties and qualifying towns shall use the funds solely for transportation purposes benefiting those Counties and Cities that are embraced by NVTa in accordance with § 15.2-4838.1.

2. The parties understand and acknowledge that NVTa will make regular distributions of the 30% Funds to its member Cities/Counties in accordance with applicable law and in accordance with the processes established by the “NVTa/CITY-COUNTY MOA” and that said MOA is hereby incorporated by reference.

A. Beginning not sooner than the month following a final decision and entry of a final order by the highest court with jurisdiction in the bond validation case of *NVTa v. Statutory Defendants Pursuant to §§ 15.2-2650, et seq.*, NVTa shall begin to distribute to its component Cities/Counties the 30% Funds to which the Cities/Counties are entitled pursuant to § 15.2-4838.1, with interest at the rate earned by NVTa; and, subject to NVTa's continued receipt of funds from the Comptroller, shall continue to distribute to the Cities/Counties their respective 30% funds on a monthly basis; provided the respective City/County remains in compliance with the terms of NVTa/City-County MOA and all applicable provisions of law.

B. Upon receipt of its 30% funds as set forth in Paragraph 2A above, COUNTY X will calculate and transfer to the special, separate account on its books that has been established in the name of QUALIFYING TOWN X in accordance with Paragraph 5 of this MOA, all amounts attributable to QUALIFYING TOWN X using the bases prescribed by Chapter 766 and in the manner set forth in Paragraph 5 of this MOA.

C. COUNTY X will advise QUALIFYING TOWN X on a quarterly basis as to the balance in QUALIFYING TOWN's X's special account.

D. For QUALIFYING TOWN X's planning and budgeting purposes, prior to the beginning of each fiscal year, COUNTY X will also provide QUALIFYING TOWN X a with a revenue estimate for the upcoming fiscal year based upon the previous twelve (12) months actual fund transfers from COUNTY X to QUALIFYING TOWN X..

3. Payment of County/Town Share of NVTAs Administrative Expenses and Payment of other Administrative Expenses. It is further understood and acknowledged by the parties that, as except as otherwise provided by written amendment to COUNTY X's NVTAs City-County MOA, pursuant to the NVTAs County-City MOA, NVTAs shall reduce the initial distribution of 30% Funds to COUNTY X at the start of NVTAs fiscal year commencing on July 1 by the amount of the COUNTY X's share of NVTAs total administrative expenses set forth in NVTAs approved budget for that fiscal year as such share is determined in accordance with § 15.2-4835. In any year, COUNTY X may notify NVTAs by June 1st of that year, that it elects to pay its share of NVTAs Administrative Expenses through means other than the COUNTY X's 30% Funds; and thereafter the COUNTY X shall pay the full amount of the COUNTY X's share of NVTAs administrative expenses before any distribution of the 30% Funds by NVTAs to COUNTY X occurs. Payment by COUNTY X of its share of NVTAs administrative expenses through means other than the COUNTY X's 30% Funds shall continue until the COUNTY X notifies NVTAs by June 1st of any year that it elects to use its 30% Funds for such purpose.

A. The parties further understand and acknowledge that COUNTY X's payment of its full amount of NVTAs administrative expenses must include the portion of such administrative expenses that are attributable to QUALIFYING TOWN X and that COUNTY X will seek reimbursement from QUALIFYING TOWN X regarding QUALIFYING TOWN X's pro rata share of all NVTAs administrative fees that were pre-paid by their constituent counties.

B. The parties further understand and acknowledge that NVTAs Counties may separately seek reimbursement from their respective qualifying towns of administrative

fees incurred by their constituent Counties in managing a qualifying town's pro rata portion of such Counties 30%, not to exceed actual costs incurred.

4. Establishment of Separate Accounts by COUNTY X and QUALIFYING TOWN X.

A. It is further understood by the parties that NVTAs's Cities/Counties are required to deposit in a separate, special fund all revenues distributed to it by NVTAs pursuant to Paragraph 2 above and all revenues collected by NVTAs's Cities/Counties from the tax imposed pursuant to § 58.1-3221.3. If any of NVTAs's Cities/Counties has not imposed the aforesaid tax, or has not imposed it at the maximum permissible rate, then that City/County is required to deposit into its separate, special fund an amount, from sources other than moneys received from NVTAs, that is equivalent to the difference between the revenue the City/County received from the aforesaid tax and the revenue the City/County would have received if it imposed the aforesaid tax at the maximum permissible rate.

B. COUNTY X agrees to establish, segregate, and maintain on its books a separate account in the name of QUALIFYING TOWN X for the purposes of calculating and distributing those revenues that are generated by and attributable to QUALIFYING TOWN X under Chapter 766. Interest on this account shall accrue at the same rate accrued on all other COUNTY X accounts.

C. QUALIFYING TOWN X agrees to establish, segregate, and maintain on its books a separate account for all NVTAs funds that it receives from COUNTY X.

D. The parties further acknowledge and agree that, because COUNTY X is required to certify to NVTAs by August 1st of each year that it has satisfied each of the requirements of 4A above, on or before July 20th of each year, the chief administrative officer of QUALIFYING TOWN X shall certify to COUNTY X, in a format prescribed

by and acceptable to COUNTY X and NVTa, that QUALIFYING TOWN X has satisfied each of the requirements set forth in this Paragraph that may be applicable to QUALIFYING TOWN X.

E. The parties further understand and acknowledge that if COUNTY X has not deposited into its separate, special fund either the revenues from the tax collected under § 58.1-3221.3 at the maximum permissible rate, or an amount derived from sources other than moneys received from NVTa equivalent to the revenue COUNTY X would have received if it imposed the aforesaid tax at the maximum permissible rate, then, in any given year, NVTa shall reduce the 30% Funds distributed to COUNTY X by the difference between the amount the COUNTY X would receive if it was imposing the aforesaid tax at the maximum rate and the amount of revenue deposited into its separate, special fund and NVTa shall retain the amount by which the distribution of COUNTY X's 30% Funds will be reduced for use by NVTa in accordance with § 15.2-4838.1C.1. In such, QUALIFYING TOWN X's percentage of COUNTY X's share of its 30% NVTa revenues shall also be reduced pro rata.

5. Maintenance of Transportation Funding by COUNTY X.

A. The parties further understand and acknowledge that COUNTY X is required to expend or disburse for transportation purposes each year an amount that is at least equal to the average annual amount expended or disbursed for transportation purposes by the COUNTY X, excluding bond proceeds or debt service payments and federal or state grants, between July 1, 2010, and June 30, 2013. In the event that COUNTY X does not expend or disburse the aforesaid amount in any year, COUNTY X shall not be the direct beneficiary of any of the NVTa Fund in the immediately succeeding year. In such event, the parties understand and acknowledge that NVTa shall make no distribution to COUNTY X of COUNTY X's 30% Funds, or any other monies from the NVTa Fund to

COUNTY X or to any of COUNTY X's qualifying towns, including QUALIFYING TOWN X; and, that in such case, all such funds shall be used in accordance § 15.2-4838.1C.1.

B. Although COUNTY X and QUALIFYING TOWN X understand and acknowledge that QUALIFYING TOWN X's receipt of annual funding under Chapter 766 is expressly subject to and contingent upon COUNTY X's maintenance of transportation funding efforts and requirements as set forth in Paragraph 5A above, QUALIFYING TOWN X shall have no independent requirement under Chapter 766 to maintain its own levels of transportation funding from year to year in order to receive its respective share of the 30% funds.

6. Use of 30% Funds by QUALIFYING TOWN X.

A. QUALIFYING TOWN X shall use its portion of COUNTY X's 30% Funds as distributed to it by COUNTY X solely for the following purposes in a manner determined by QUALIFYING TOWN: (1) for additional urban or secondary road construction; (2) for other capital improvements that reduce congestion; (3) for other transportation capital improvements which have been approved by the most recent long range transportation plan adopted by NVTa; or (4) for public transportation purposes. QUALIFYING TOWN X shall not use any of the revenue distributed to it by NVTa to repay debt issued before July 1, 2013.

B. In the event that QUALIFYING TOWN X appropriates or allocates any of its portion of COUNTY X's 30% Funds to a purpose other than those specified in paragraph 6A above and unless QUALIFYING TOWN X demonstrates to the satisfaction of COUNTY X and NVTa that such acts were solely a result of and attributable to clerical or other unintentional, inadvertent error, then NVTa and COUNTY X shall cease any further distributions of the 30% Funds to QUALIFYING TOWN X; and QUALIFYING

TOWN X shall not be the direct beneficiary of any of the funds from the NVTA Fund in the year immediately succeeding the year in which any of its portion of COUNTY X's 30% Funds were appropriated or allocated to an impermissible purpose or use. In that succeeding year, NVTA will make no 30% distribution to COUNTY X, and it shall instruct COUNTY X that there shall be no pro rata distribution of COUNTY X's 30% funds to QUALIFYING TOWN X or to any other qualifying town located in COUNTY X or from any other monies from the NVTA Fund.

7. Distribution to Qualifying Towns of Proportionate Share of 30% Funds.

A. Pursuant to Chapter 766, the parties agree to work cooperatively with NVTA for purposes of implementing the provisions of § 15.2-4838.1 and to ensure that the all qualifying towns, including QUALIFYING TOWN X, receive their respective shares of the 30% Funds distributed by NVTA to COUNTY X. Such shares shall be determined based on the population of school age children in the town for the purposes of calculating the portion of the 30% Funds attributable to sales tax, and the location of the taxpaying business for purposes of calculating the portion of the 30% Funds attributable to the transient occupancy tax and the location of the transferred property for purposes of calculating the portion of the 30% Funds attributable to the grantors tax.

B. The parties further understand and acknowledge that NVTA and COUNTY X have an ongoing responsibility to ensure that all qualifying towns in COUNTY X use the 30% Funds in compliance with this MOA, COUNTY X's NVTA/City-COUNTY MOA, and in accordance with law; and that QUALIFYING TOWN X's failure to comply with the terms and conditions of this MOA shall constitute a default and failure by QUALIFYING TOWN X, and may constitute a default by COUNTY X and all other qualifying towns located in COUNTY X; thereby subjecting to all such governmental

entities to the consequences and penalties of such default and failure as set forth in this MOA and as required by law.

C. COUNTY X shall bear the responsibility of ensuring that QUALIFYING TOWN X pays its proportionate share of NVTA's administrative expenses, as provided in Paragraph 3 above. QUALIFYING TOWN X will reimburse COUNTY X for the portion of NVTA's administrative expenses attributable to QUALIFYING TOWN X and, if required by COUNTY X, COUNTY X's actual administrative expenses incurred in managing QUALIFYING TOWN X's 30% share. Reimbursement by QUALIFYING TOWN X of its portion of NVTA's administrative expenses and, if applicable, COUNTY X's actual administrative expenses shall be made on a (monthly/quarterly?) basis via billed invoice transmitted by COUNTY X to QUALIFYING TOWN X payable within thirty (30) days upon receipt by QUALIFYING TOWN X. Upon agreement of the parties, reimbursement payments for QUALIFYING TOWN X's portion of NVTA's administrative expenses and/or COUNTY X's actual administrative expenses may be made via electronic transfer of funds, if the parties so agree.

D. All distributions of NVTA funds by COUNTY X to QUALIFYING TOWN X under this MOA will be a project based and by reimbursement method only. All requests for payment reimbursements by QUALIFYING TOWN X to COUNTY X will be submitted in a form and manner determined by and acceptable to NVTA and COUNTY X. Upon proper submission by QUALIFYING TOWN X to COUNTY X; and after review and approval by COUNTY X, COUNTY X shall transmit payment to QUALIFYING TOWN X within twenty (20) days from receipt and may be made via electronic transfer of funds, if the parties so agree.

E. Without exception, all projects that QUALIFYING TOWN X selects and submits for NVTa funding reimbursement to COUNTY X must comply with all requirements and conditions for transportation funding as prescribed under Chapter 766. Questions or disputes as to whether a specific Qualifying TOWN X transportation project may be eligible for NVTa funding under this MOA or under Chapter 766 should be submitted, in writing, to NVTa, c/o NVTa's Interim Director. Upon receipt of any such request, NVTa's technical and legal staff will review the submission and make recommendations to NVTa. NVTa will make the final determination of project funding eligibility.

F. If QUALIFYING TOWN X fails to comply with the project selection requirements as prescribed by Chapter 766 or fails to comply with the terms and conditions of this MOA, it will be obligated to refund with interest to COUNTY X all funds used contrary to this MOA or in derogation of the law.

8. COUNTY X's Obligation to File Annual Report to NVTa and TOWN X's Obligation to File Annual Report to COUNTY X. The parties understand and acknowledge that COUNTY X must annually provide to NVTa an unaudited financial report, with supporting documentation, showing that the 30% Funds were used as required by Paragraph 6; which Annual Report must include sufficient documentation, showing QUALIFYING TOWN X's appropriate use of its portion of COUNTY X's 30% funds during the previous fiscal year. Because COUNTY X is required to provide its Report to NVTa on or before August 1st of each year, QUALIFYING TOWN X shall provide to COUNTY X on or before July 20th of each year an unaudited financial report, with supporting documentation in a form required by NVTa and COUNTY X showing that all funds distributed by COUNTY X to QUALIFYING TOWN X during the previous fiscal year were used as required by Paragraph 6 and in full compliance with the

law. In the event the QUALIFYING TOWN X's audited financials show a material variance, defined as five percent (5%) or more, from the initial report, QUALIFYING TOWN X shall provide COUNTY X with supplemental documentation satisfactory to COUNTY X, detailing QUALIFYING TOWN X's use of the 30% Funds. In the event the QUALIFYING TOWN X fails to provide the report or information as required above, COUNTY X shall withhold further distributions of QUALIFYING TOWN X's 30% Funds until the report or supplemental information is provided in accordance with this Paragraph. Once QUALIFYING TOWN X provides an acceptable report with appropriate documentation, all withheld funds, including any interest accrued on such withheld funds, shall be made available for distribution to QUALIFYING TOWN X.

9. Failure to Comply with Memorandum of Agreement.

A. In the event COUNTY X fails to perform any of its obligations under this MOA, QUALIFYING TOWN X shall provide written notice to COUNTY X's County Executive/Manager/Administrator of such failure or non-compliance. COUNTY X shall cure or commence to cure the event of noncompliance within thirty (30) days of receipt of notice from Qualifying TOWN X. In the event COUNTY X fails to cure or commence to cure the event of noncompliance and diligently pursue completion thereof, QUALIFYING TOWN X may either request a third party review by NVTa of the disputed matter or pursues all remedies available at law to obtain compliance by COUNTY X. If QUALIFYING TOWN X requests review of the matter by NVTa, it shall so notify NVTa's Executive Director in writing. The matter will thereafter be referred to NVTa's Finance Committee which will review the matter and prepare recommendations for NVTa's consideration and action. If NVTa determines that COUNTY X is not in compliance with this MOA, then COUNTY X has thirty (30) days from NVTa's decision to cure the event of non-compliance.

B. In the event QUALIFYING TOWN X fails to perform any of its obligations under this MOA, COUNTY X's Executive/ Manager/Administrator shall notify the Mayor or Town Manager of QUALIFYING TOWN X and notify NVTA's Executive Director. The matter will thereafter be referred to NVTA's Finance Committee which shall review and investigate the matter and prepare recommendations for NVTA consideration and action. Thereafter, NVTA shall determine whether to declare that QUALIFYING TOWN X is in default; in which case NVTA shall provide written notice to COUNTY X and QUALIFYING TOWN X of such failure. QUALIFYING TOWN X shall cure or commence to cure the event of noncompliance within thirty (30) days of receipt of notice from NVTA. In the event QUALIFYING TOWN X fails to cure or commence to cure the event of noncompliance and diligently pursue completion thereof, NVTA shall direct that COUNTY X withhold further distributions of QUALIFYING TOWN X's portion of COUNTY X's 30% Funds until such time as QUALIFYING TOWN X complies with its obligations under this MOA. In addition, the parties understand and acknowledge that COUNTY X and NVTA may pursue all available remedies at law to obtain compliance by QUALIFYING TOWN X.

C. A cure by QUALIFYING TOWN's failure to comply with the terms of this MOA shall not change or alter the consequences of and imposition of the penalties associated with any non-compliance or default by QUALIFYING TOWN X as set forth in Paragraph 6B of this Memorandum of Agreement.

10. QUALIFYING TOWN'S Obligation to Reimburse Mis-Used Funds to COUNTY X.

A. In the event QUALIFYING TOWN X fails to use any of the 30% Funds in the manner permitted by law, in addition to the consequences set forth in Paragraph 6B, it shall reimburse COUNTY X the full amount of such mis-used funds plus accrued

interest. Until the full amount is reimbursed to COUNTY X, COUNTY X shall withhold further distributions of the 30% Funds to QUALIFYING TOWN X.

B. QUALIFYING TOWN X's reimbursement of mis-used funds shall not change the consequences of and penalties associated with such mis-use set forth in Paragraph 6B of this MOA.

11. Maintenance of Records by QUALIFYING TOWN X and COUNTY X.
QUALIFYING TOWN X and COUNTY X shall maintain all records relating to the 30% Funds and the use thereof for a minimum of five (5) years from the date the record was created. In addition to the foregoing, QUALIFYING TOWN X and COUNTY X shall comply with the Public Records Act and all applicable state and federal laws with regard to the retention of records.

12. Notice. Any notice required or permitted to be provided under this MOA shall be in writing and delivered in person, or sent by U.S. Mail to the below named representatives at the below addresses:

QUALIFYING TOWN X:

Mayor/Town Manager

Town of _____

Address:

COUNTY X _____:

County Chief Administrative Officer

_____ County

Address:

QUALIFYING TOWN X and COUNTY X may change their respective representative designated to receive notices for purposes of this MOA by providing written notice of such change to the other party.

13. Entire Agreement. This MOA constitutes the entire agreement between QUALIFYING TOWN X and COUNTY X and supersedes any prior understanding or agreement between them with regard to COUNTY X distribution to QUALIFYING TOWN X its pro rata portion of COUNTY X's 30% Funds; except that the parties understand and acknowledge that the NVTa/City-COUNTY MOA as between NVTa and COUNTY X referenced above has been expressly incorporated herein.

14. No Third Party Beneficiaries. The provisions of this MOA shall inure to the benefit of, and bind QUALIFYING TOWN X and COUNTY X, but shall not inure to the benefit of any other party or other persons; except as to NVTa, as expressly provided in this MOA.

15. Severability. If any provision of this MOA or the application of the provision to any circumstance is invalid, illegal or unenforceable to any extent, the remainder of this MOA and the application of the provision will not be affected and will be enforceable to the fullest extent permitted by law.

16. Amendments. Any amendment to this MOA must be made in writing and signed by QUALIFYING TOWN and COUNTY X.

IN WITNESS WHEREFORE, the parties hereto, by their duly authorized representatives, have executed this Memorandum of Agreement as of the date and year aforesaid.

COUNTY of _____

Attest:

Clerk

By _____
Chairman

TOWN of _____

Attest:

Clerk

By: _____
Mayor